

REMARKS/ARGUMENTS

Prior to entry of this amendment, the application included claims 1-51. A final office action mailed September 27, 2005, rejected claims 1-51 under 35 U.S.C. § 102(e) as being anticipated by US Publication No. 2004/0083170 to Bam ("Bam"). This amendment amends claim 1 but does not add or cancel any claims. Hence, after entry of this amendment, claims 1-51 remain pending for examination.

Claim Amendments

Claim 1 has been amended to provide for enhanced readability. Specifically, various elements of claim 1 have been organized into separate paragraphs and have been given labels (e.g., "(a)") to make those elements more readable. It is submitted that the amendments neither add any new matter nor affect the scope of claim 1 in any respect.

§ 102 Rejections

The final office action rejected all pending claims under § 102(e) as being anticipated by Bam. As noted in the applicant's prior response, however, Bam itself was filed after the priority date of the present application. Also as noted in the applicant's prior response, Bam does claim priority to U.S. Application No. 60/420,643, filed August 22, 2002 (the "Bam Provisional"). It is noted that the final office action merely maintains the rejections of the earlier, non-final office action, which relied on the disclosure of Bam itself, not the Bam Provisional. The Bam Provisional, however, does not teach or suggest each element of any pending claim in the present application, so to the extent that Bam discloses each element of any pending claim (a proposition the applicant does not concede), that disclosure is not supported by the Bam Provisional.

It is worth noting that, in addressing the applicant's earlier argument that the Bam Provisional does not teach or suggest the point of sale device receiving an identifier and transmitting the identifier, the final office action does cite a portion of the Bam Provisional. As discussed below, however, the cited portion does not teach or suggest the functionality attributed to it by the final office action. Moreover, the final office action identifies (and a thorough review

reveals) nothing the Bam Provisional that teaches or suggests various other elements of the claims, and the applicant respectfully requests a citation to specific portions of the Bam Provisional that support the rejection of the claims under § 102(e).

Under § 102, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Because the Bam Provisional does not teach or suggest each element of any independent claim (each of which is believed to be entitled to a priority date earlier than the filing date of Bam itself), Bam does not anticipate any pending claim, and the rejections under § 102(e) should be withdrawn.

The system disclosed by the Bam Provisional “enables the use of these electronic/physical cards at a physical or virtual location using a phone.” Bam Provisional, at 4. More specifically, the Bam Provisional teaches that “Vayusa will use a [DTMF] system that will allow customers to access the Vayusa system via touchtone keys on any phone,” *Id.* at 6. That is, “[a consumer] [d]ialing into Vayusa servers allows Vayusa to identify the consumer. Wireless standards in the United States associated one telephone number with one mobile phone, thereby allowing Vayusa to ID the end customer.” *Id.* Hence, “[t]he payment platform will allow a consumer at a retail point of sale location to access their checking (ACH)/debit/credit/loyalty accounts through their cell phone and make a payment.” *Id.* at 7.

The Bam Provisional describes the operation of the Vayusa system thus:

The consumer will approach the cash register at a merchant whose point of sale is enabled to handle Vayusa transactions. The clerk will ring in the consumer’s merchandise, just like any other transaction and will then ask the consumer how they would like to pay, “Cash, Credit or Vayusa.” The consumer, who has already signed up for a Vayusa account, will answer, “Vayusa.” At this point the clerk will hit the Vayusa payment key on the register and will wait for confirmation. The ‘Vayusa’ key will be a programmed function key that will be positioned next to the Visa and Master Card keys on the register.

Simultaneous to the clerk ringing in the order, the consumer will speed dial, '*PAY' to access the Vayusa server system and will then enter a unique Vayusa POS identification number that is displayed, with the Vayusa logo, on the cash register. The consumer will then hear, through his cell phone, a request for payment from the merchant with the original amount and any appropriate rewards that incorporate Vayusa and merchant specific loyalty discounts. The consumer will verify the payment by entering their personal identification number. A person can enter the PIN without listening to the voice. The need to enter the PIN may vary depending on the dollar amount.

Immediately after the consumer has verified payment, the clerk will receive a visual notification through the POS that the payment has been made. . . .

Id. at 7-8. Specifically, as indicated by Fig. 2.0, the customer enters the PIN number on the phone, not at the POS device. Hence, in the system disclosed by the BAM provisional, the POS device accepts no input from the consumer/merchant except an amount and an indication that he Vayusa system is to be used for payment. In particular, neither the consumer nor the merchant ever enters into the POS device any identifying information from the consumer; rather, that information is received by the Vayusa system from the consumer's wireless phone.

In contrast, claim 1 recites, inter alia, that the point of sale device is configured to "receive an identifier, the identifier including sufficient identifying information to allow the transaction provider to identify the customer's account" and that the transaction provider control is configured to "receive the identifier and the request to process a money transfer transaction from the point of sale device" (emphasis added). The Bam Provisional neither teaches nor suggests that a point of sale device might receive an identifier, as that term is used by claim 1, or that a transaction provider control might be configured to receive an identifier from a point of sale device. In fact, this functionality would be impossible in the system disclosed by the Bam Provisional, because the point of sale device in the Bam Provisional never has this information. Instead, as described in the passage quoted above, the transaction provider control (which presumably would be the Vayusa Portal/Platform) receives this information from the consumer's wireless phone. For at least this reason, Bam cannot anticipate claim 1.

Nor does Bam anticipate independent claim 20, which recites, inter alia, that the point of sale device is configured to “receive an identifier associated with a convenience card.” As noted above, the Bam Provisional does not teach or suggest that the POS device ever receives an identifier associated with a convenience card. Instead, the POS device of the Bam Provisional merely receives “a notification . . . that payment has been made.” For at least similar reasons, Bam also fails to anticipate independent claims 48, 49 and 51.

Claim 1 also recites that the transaction provider control is configured, inter alia, to “credit the customer’s account with an award associated with the request to process a money transfer transaction, the award being redeemable by the customer for credit toward the purchase of a product from the service provider.” The Bam Provisional also fails to teach or suggest this element. The Bam Provisional does mention that loyalty programs and awards might be accommodated by the Vayusa system. Merely by way of example, the Bam Provisional discloses that “[i]f a person is enrolled in a loyalty program, then it [the Vayusa system] automatically transmits the loyalty program information to the merchant’s POS system to issue appropriate discounts before charging the customer.” Bam Provisional, at 5. The Bam Provisional also mentions that “the consumer will then hear, through his cell phone, . . . any appropriate rewards/discounts that incorporate Vayusa and merchant specific loyalty discounts.” Id. at 8.

This disclosure, however, does not teach or suggest “credit[ing] the customer’s account with an award . . . being redeemable by the customer for credit toward the purchase of a product from a service provider,” as recited by claim 1. First of all, the only specific teaching or suggestion in the Bam provisional relates to applying discounts, not to awarding credit. (While the Bam Provisional does teach that a consumer might be notified of rewards, it does not teach crediting any accounts with such rewards, or that such rewards might be redeemable for credit toward the purchase of a product from a service provider, as claimed by claim 1.) For at least this additional reason, Bam fails to anticipate claim 1. For at least similar reasons, Bam also fails to anticipate independent claim 23, 30, and 50, which recite substantially similar elements. Nor does the Bam provisional teach or suggest each element of claim 47, which recites, inter alia,

“adding credit to the account at the third-party service provider, wherein the credit is based at least in part on the money transfer transaction.”

The Bam Provisional also fails to disclose “crediting the customer’s account with an award, the award being equivalent to the calculated amount of prepaid telephone service credit and based at least in part on the request to process a money transfer transaction,” as recited by claim 48, and Bam therefore fails to anticipate this claim as well. Independent claims 49 and 51, which recite similar elements, are believed to be allowable for at least similar reasons as claim 48.

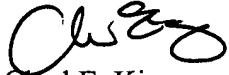
Hence, Bam fails to anticipate any of independent claims 1, 20, 23, 30 and 47-51, and those claims are believed to be allowable over Bam. Each of the remaining claims in the application depend from one of these claims, and the dependent claims are believed to be allowable as depending from allowable base claims and as being directed to specific novel substitutes. Reconsideration of all pending claims is therefore respectfully requested.

Conclusion

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

Date: 11-28-05


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